

**WILLKIE FARR & GALLAGHER LLP**

SIMONA AGNOLUCCI (SBN 246943)

sagnolucci@willkie.com

JONATHAN A. PATCHEN (SBN 237346)

jpatchen@willkie.com

DANIEL P. MARTIN (SBN 306794)

dpmartin@willkie.com

ANN NIEHAUS (SBN 325474)

aniehaus@willkie.com

ERICA S. MIRANDA (SBN 325188)

emiranda@willkie.com

One Front Street, 34<sup>th</sup> Floor

San Francisco, California 94111

Telephone: (415) 858-7400

Facsimile: (415) 858-7599

Attorneys for Plaintiff

**Dairy, LLC**

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA**

DAIRY, LLC, a Delaware Limited Liability  
Company,

Plaintiff/Counterdefendant,

vs.

MILK MOOVEMENT, INC., a foreign  
Corporation, and MILK MOOVEMENT,  
LLC, a Delaware Limited Liability  
Company,

Defendants/Counterclaimants.

Case No. 2:21-cv-02233-WBS-AC

Magistrate Judge Allison Claire

**STIPULATED [~~PROPOSED~~] ORDER  
RE: DISCOVERY OF  
ELECTRONICALLY STORED  
INFORMATION**

Complaint Filed: December 2, 2021

FAC Filed: February 8, 2022

Cross-Complaint Filed: April 27, 2022

FACC Filed: July 21, 2022

1           **1.     PURPOSE**

2           This Order will govern discovery of electronically stored information (“ESI”) in this case  
3 as a supplement to the Federal Rules of Civil Procedure, and any other applicable orders and  
4 rules.

5           **2.     COOPERATION**

6           The parties are aware of the importance the Court places on cooperation and commit to  
7 cooperate in good faith regarding discovery of ESI.

8           **3.     PROPORTIONALITY**

9           Parties are expected to use reasonable, good faith and proportional efforts to preserve,  
10 identify and produce relevant information consistent with Fed. R. Civ. P. 26<sup>1</sup>. This includes  
11 identifying appropriate limits to discovery, including limits on custodians, identification of  
12 relevant subject matter, time periods for discovery and other parameters to limit and guide  
13 preservation and discovery issues.

14          **4.     LIAISON**

15          The parties have identified liaisons to each other who are and will be knowledgeable  
16 about and responsible for discussing their respective ESI. Each e-discovery liaison will be, or  
17 have access to those who are, knowledgeable about the technical aspects of e-discovery,  
18 including the location, nature, accessibility, format, collection, search methodologies, and  
19 production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer about  
20 ESI and to help resolve disputes without court intervention.

21          **5.     PRESERVATION**

22          The parties agree that preservation of potentially relevant ESI will be reasonable and  
23 proportionate. To reduce the costs and burdens of preservation and to ensure proper ESI is  
24 preserved, the parties agree that:

25               **a)**     The parties have discussed the custodians whose ESI they believe should

26 \_\_\_\_\_  
27 <sup>1</sup> Information can originate in any form, including ESI and paper, and is not limited to information created  
28 or stored electronically.

1 be preserved. The parties shall add or remove custodians consistent with  
2 their obligations under the applicable rules and the principles of  
3 cooperation and proportionality discussed herein;

4 **b)** The parties agree that the following sources of data are not reasonably  
5 accessible and need not be searched, reviewed, or produced, absent a  
6 showing of good cause or court order:

- 7 1. voice messages
- 8 2. duplicative information from another preserved source;
- 9 3. automatically saved versions of documents and emails;
- 10 4. deleted, slack, fragmented, or other data accessible only by  
11 forensics;
- 12 5. systems, server and network logs;
- 13 6. random access memory (RAM), temporary files, or other  
14 ephemeral data;
- 15 7. on-line access data such as temporary internet files, history,  
16 cache, cookies, and the like;
- 17 8. dynamic fields of databases or log files that are not retained in  
18 the usual course of business;
- 19 9. data in metadata fields that are frequently updated automatically,  
20 such as last opened dates;
- 21 10. data stored on mobile devices and tablets that are neither issued  
22 by a Party nor primarily used for conducting business;
- 23 11. data stored on mobile devices and tablets issued by a Party (e.g.,  
24 email, calendars, contact data, and notes) to the extent that such  
25 data is routinely saved elsewhere in another location that the  
26 issuing Party will be searching (e.g., on a server, laptop, desktop  
27 computer, or “cloud” storage); and  
28

1                   **12.**     data maintained or duplicated for the purpose of system recovery  
2   or information restoration, including but not limited to, system  
3   recovery backup tapes or other backup media, continuity of  
4   operations systems, and data or system mirrors or shadows.

5                   **c)**     In addition to the agreements above, the parties agree to meet and confer  
6   regarding data sources that may contain relevant information but, under  
7   the limits to discovery considered by Fed. R. Civ. P. 26, should not be  
8   preserved.

9                   **6.     SEARCH**

10                   The parties have discussed methods to search ESI in order to identify ESI that is  
11                   subject to production in discovery and filter out ESI that is not subject to discovery. Namely, the  
12                   parties have exchanged proposed search terms to use for identifying potentially responsive ESI.  
13                   The parties shall meet and confer regarding the addition or expansion of search terms consistent  
14                   with their obligations under the applicable rules and the principles of cooperation and  
15                   proportionality discussed herein, to the extent that the scope of discovery may change after the  
16                   parties' prior meet-and-confer efforts on this topic.

17                   **7.     THREADING**

18                   In order to reduce the volume of entirely duplicative content within email threads being  
19                   produced, the Parties may use email threading analytics technology which shall permit a party to  
20                   produce only the most inclusive email message(s) within an email thread. For purposes of this  
21                   paragraph, an inclusive email message ("Inclusive") is one that contains all text and attachments  
22                   in the segments of the email thread being produced (i.e., all unique content will be produced).  
23                   Documents which are otherwise part of the review set, and which cannot be threaded, must be  
24                   reviewed in their entirety.

25                   **8.     PRODUCTION FORMATS**

26                   For all productions of documents to be made after the entry of this Order, the following  
27                   production formats and requirements shall control. The parties agree to produce documents in  
28

single page TIFF file format. The parties agree to produce natives of Microsoft Excel, audio, and video files. No party is required to create or generate a written transcript of any audio or video file for purposes of document productions in this action. If particular documents warrant a different format, the parties will cooperate to arrange for the mutually acceptable production of such documents. The parties agree not to degrade the searchability of documents as part of the document production process. A party is required to produce only a single copy of a responsive document, and a party may de-duplicate responsive ESI across Custodians so long as an ALL CUSTODIAN metadata field is populated for such de-duplicated documents as provided for below. The parties agree to produce the metadata fields identified in Table 1, where such field information exists for the type of document being produced (e.g., email, non-email electronic files, scanned hard copy).

**a) BATES NUMBERING**

Each Bates number will: (i) be unique across the entire document production; (ii) maintain a consistent length across the entire production (i.e., ABC00000001—with no space between the prefix and the number, padded to the same number of characters); (iii) contain no special characters; and (iv) be sequential within a given document. If a Bates number or set of Bates numbers is skipped in a production, the producing Party will so note in a cover letter, production slipsheets, or production log accompanying the production. Each production will be assigned a unique volume production number.

**b) PRODUCTION OF HARD COPY DOCUMENTS – FORMAT**

Hard copy documents should be scanned as single-page, Group IV, 300 DPI TIFF images with an .opt image cross-reference file and a delimited database load file (i.e., .dat). The database load file should contain the following fields: “BEGNO,” “ENDNO,” “PAGES,” “VOLUME” and “CUSTODIAN.” Multi-page OCR text for each document should also be provided. The OCR software shall maximize text quality. Settings such as “auto-skewing” and “auto-rotation” should be turned on during the OCR process.

1 The documents should be logically unitized (i.e., distinct documents shall not be merged  
2 into a single record, and single documents shall not be split into multiple records) and be  
3 produced in the order in which they are kept in the usual course of business. If a folder with hard  
4 copy documents is produced, the label of that folder, if any, shall be scanned and produced along  
5 with the documents in the folder. The foldering relationship among the documents in the folder  
6 should be produced, either by use of a parent-child relationship or otherwise. If any original hard  
7 copy document has attachments, the Parties will scan and produce copies of the attachments in  
8 the same manner as other documents. If any original hard copy document has notes affixed  
9 thereto, the Parties will scan the page(s) of the original hard copy document containing the notes  
10 both with the notes attached and with the notes removed, and produce copies of both versions  
11 unitized together but otherwise in the same manner as other documents.

12 Hard copy documents containing color need not be produced in color in the first instance.  
13 The receiving Party may make a reasonable request for the production of specific documents in  
14 color, by providing (i) a list of the Bates numbers of documents it requests to be produced in  
15 color format; and (ii) an explanation of the need for production in color format. The producing  
16 Party shall not unreasonably deny such requests.

17 **c) PRODUCTION OF ESI**

18 Unless otherwise specifically stated and agreed to the contrary, the Parties agree that only  
19 reasonably accessible ESI will be reviewed and produced. Nothing in this protocol establishes  
20 any agreement as to either the temporal or subject matter scope of discovery in this action.  
21 Should a dispute arise among the Parties in determining and agreeing upon whether a particular  
22 population of ESI or entire ESI data source is inaccessible or needs to be produced, the Parties  
23 will make a good-faith effort to resolve such a dispute amongst themselves before any motion is  
24 filed with the Court.

25 **1. Format**

26 The Parties will produce ESI in single-page, black-and-white, TIFF Group IV, 300 DPI  
27 TIFF images with the exception of spreadsheet and presentation type files, source code, audio  
28

1 and video files, which shall be produced in native format. If an original document contains color  
2 and a reasonable request is made by the receiving Party for the production of specific documents  
3 in color, the receiving Party may request production of such documents in color by providing  
4 (i) a list of the Bates numbers of documents it requests to be produced in color format; and (ii) an  
5 explanation of the need for production in color format. The producing Party shall not  
6 unreasonably deny such requests. The Parties are under no obligation to enhance an image  
7 beyond how it was kept in the usual course of business. TIFFs/JPGs will show any and all text  
8 and images that would be visible to the reader using the native software that created the  
9 document. For example, TIFFs/JPGs of email messages should include the BCC line. If the  
10 image does not accurately reflect the document as it was kept in the usual course of business,  
11 including all comments, edits, tracking, etc., the Parties agree to meet and confer in good faith on  
12 production format options.

13 If a document is produced in native format, a single-page Bates stamped image slip sheet  
14 stating the document has been produced in native format should be provided. Each document  
15 should be named according to the Bates number it has been assigned (and, optionally, also with  
16 the document's confidentiality designation, if any) and should be linked directly to its  
17 corresponding record in the load file using the NATIVELINK field. To the extent that either  
18 Party believes that specific documents or classes of documents, not already identified within this  
19 protocol, should be produced in native format, the Parties agree to meet and confer in good faith.

## 20 **2. De-Duplication**

21 Each Party shall remove exact duplicate documents based on MD5 or SHA-1 hash  
22 values, at the family level. Attachments should not be eliminated as duplicates for purposes of  
23 production, unless the parent email and all attachments are also duplicates. The Parties agree  
24 that an email that includes content in the BCC or other blind copy field shall not be treated as a  
25 duplicate of an email that does not include content in those fields, even if all remaining content  
26 in the email is identical. Removal of near-duplicate documents is not acceptable. De-duplication  
27 will be done across the entire collection (global de-duplication) and the ALL CUSTODIAN field  
28

will list each custodian, separated by a semicolon, who was a source of that document. Should the ALL CUSTODIAN metadata field produced become outdated due to collecting data from additional custodians, an overlay file providing all the custodians for the affected documents will be produced prior to substantial completion of the document production.

### **3. Metadata**

All ESI will be produced with a delimited, database load file that contains the Metadata fields listed in Table 1, attached hereto, to the extent such data exists, as kept in the ordinary course, for a particular document. The Metadata produced should have the correct encoding to enable preservation of the documents' original language.

### **4. Embedded Objects**

Embedded files shall be produced as attachments to the document that contained the embedded file, with the parent/child relationship preserved. The embedded files will be marked with a "YES" in the load file under the "Is Embedded" Metadata field. The Parties agree that logos need not be extracted as separate documents as long as they are displayed in the parent document.

### **5. Attachments**

The Parties agree that if any part of an email or its attachments is responsive, the entire email and attachments will be produced, except any attachments that must be withheld or redacted on the basis of privilege. If a document in a family is fully privileged, but is part of a family that includes at least one other document that is not fully privileged, then the fully privileged document(s) shall be produced fully redacted so that the family is not broken. The Parties will meet and confer about whether there is an appropriate basis for withholding a family document for any reason other than attorney-client or work product privilege. The attachments will be produced sequentially after the parent email.

### **6. Compressed File Types**

Compressed file types (*e.g.*, .ZIP, .RAR, .CAB, .Z) should be decompressed so that the lowest-level document or file is extracted. To the extent that either Party believes that the

1 container files should be produced in native format, the Parties agree to meet and confer in good  
2 faith.

3 **7. Structured Data**

4 To the extent a response to discovery requires production of electronic information stored  
5 in a database, the Parties will meet and confer regarding methods of production. The Parties will  
6 consider whether all relevant information may be provided by querying the database for  
7 discoverable information and generating a report in a reasonably usable and exportable electronic  
8 file.

9 **8. Encryption**

10 To maximize the security of information in transit, any media on which documents are  
11 produced may be encrypted. In such cases, the producing Party shall transmit the encryption key  
12 or password to the receiving Party under separate cover.

13 **9. Redactions**

14 For redacted documents, the producing Party may withhold only the following metadata  
15 (Subject, FileName, and MD5 Hash). OCR text of the redacted image shall be produced. For  
16 spreadsheets that the Parties have agreed to produce in native form, all redactions shall be made  
17 to the native form of the document, to the extent reasonably possible. If the native document  
18 (including its metadata) cannot be adequately redacted, a redacted image of the document may  
19 be produced as provided for herein.

20 **10. Interpretation**

21 If there is a conflict between the provisions of this protocol and any protective order  
22 entered in this action, the protective order shall control. Moreover, nothing in this protocol shall  
23 waive or limit any protections afforded the Parties under Federal Rule of Evidence 502.

24 Nothing in this protocol shall be interpreted to require the disclosure of any document  
25 that a Party contends is protected from disclosure by the attorney-client privilege, work-product  
26 doctrine, or any other applicable privilege or protection, nor shall this protocol require the  
27 production of ESI or other documents that are not discoverable under applicable law.  
28

**9. TIMING**

The parties agree that ESI document productions will be made on a rolling basis starting on October 21, 2022. The parties agree that ESI document productions will be completed in accordance with any applicable case schedule set by the Court in this action.

**10. DOCUMENTS PROTECTED FROM DISCOVERY**

Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-protected document is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding.

A producing party may assert privilege or protection over produced documents at any time by notifying the receiving party in writing of the assertion of privilege or protection. After being notified, a party must promptly return or destroy the specified information and any copies it has and may not sequester, use or disclose the information until the claim is resolved. This includes a restriction against presenting the information to the court for a determination of the claim. Information that contains privileged matter or attorney work product shall be returned immediately if such information appears on its face or if requested.

Nothing in this Agreement shall be interpreted to require disclosure of irrelevant information or relevant information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege or immunity. The parties do not waive any objections to the production, discoverability, admissibility, or confidentiality of documents and ESI.

**11. PRIVILEGE LOG**

- a) If a party reasonably determines that one or more responsive documents are not discoverable because it is subject to the attorney-client communication privilege or work product doctrine, or otherwise not discoverable on the basis of a recognized protection or privilege (collectively, the “Privileges” and each a “Privilege”), the party shall use reasonable efforts to produce a log for each document or each category of documents withheld for privilege from that production.

- b) Communications involving counsel, as well as experts retained for the purpose of this litigation, that post-date November 1, 2021 need not be placed on a privilege log.
- c) Work product prepared by or at the direction of counsel for purposes of this litigation that post-dates November 1, 2021 need not be placed on a privilege log.
- d) Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).
- e) for email communications, only the Inclusive emails must be logged.
- f) The Parties shall exchange their respective privilege logs within thirty (30) days of completing document productions.
- g) So long as the redaction language on the image indicates **Redacted – Privileged** and the document’s metadata is produced without redaction (except for any redactions permitted by Paragraph 9), redaction logs shall not be required. Redactions for personally-identifiable information shall be made with a black box and need not be logged. On a document-by-document basis, a Party may request additional information about the redaction. To avoid confusion, any privilege redactions shall not be made with a black box.

## 12. MODIFICATION

This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court for good cause shown.

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1           **IT IS SO STIPULATED**, through Counsel of Record.

2                                   WILLKIE FARR & GALLAGHER LLP  
3                                   Simona A. Agnolucci  
4                                   Jonathan A. Patchen  
5                                   Daniel P. Martin  
6                                   Ann S. Niehaus  
7                                   Erica S. Miranda

8                                   By: /s/ Simona A. Agnolucci  
9                                   Simona A. Agnolucci

10                                  Attorneys for Plaintiff  
11                                  DAIRY, LLC


12                                  MORGAN, LEWIS & BOCKIUS, LLP  
13                                  Carla B. Oakley  
14                                  Lindsey M. Shinn  
15                                  Geoffrey T. Holtz  
16                                  Kevin M. Papay  
17                                  Ehsun Forghany  
18                                  Benjamin Hand

19                                  By: /s/ Kevin M. Papay  
20                                  Kevin M. Papay

21                                  Attorneys for Defendant  
22                                  MILK MOOVEMENT, INC. and  
23                                  Defendant MILK MOOVEMENT LLC

24           **IT IS ORDERED** that the forgoing Agreement is approved.

25           Dated: November 2, 2022

26                                     
27                                   ALLISON CLAIRE  
28                                   UNITED STATES MAGISTRATE JUDGE

**Table 1: Metadata Fields**

BEGBATES	Beginning Bates Number
ENDBATES	Ending Bates Number
BEGATTACH	Beginning Bates number of the first document in an attachment range
ENDATTACH	Ending Bates number of the last document in attachment range
VOLUME	The production volume associated with the produced file
PAGES	The number of pages of the produced document
ALL CUSTODIAN	Names of all custodians, separated by semicolons, for whom the document was processed whether or not the file was removed upon de-duplication
RECORD TYPE	Populated with Email, Attachment, Paper, or Loose File
FILENAME	Filename of the original native file
FILEEXT	File extension of the original native file
FILESIZE	KB size of the original native file
APPLICATION	Indicates software application that generated the ESI item (e.g., Outlook, Word).
SORTDATE	Date populated at family level using parent set date propagated down through children. Stand-alone documents populated with last mod date
CREATEDATE	Date that a non-email document was created (yyyymmdd format)
CREATETIME	Time that a non-email document was created (hh:mm:ss format)
LASTMODDATE	Last date that a non-email document was modified (yyyymmdd format)
LASTMODTIME	Last time that a non-email document was modified (hh:mm:ss format)
SENTDATE	Sent date of an email message (yyyymmdd format)
SENTTIME	Sent time of an email message (hh:mm:ss format)
RECEIVEDDATE	Received date of an email message (yyyymmdd format)
RECEIVEDTIME	Received time of an email message (hh:mm:ss format)
SUBJECT	Subject line extracted from an email message
AUTHOR	Author field extracted from the metadata of a non-email document
FROM	From field extracted from an email message
TO	To or Recipient field extracted from an email message

CC	CC or Carbon Copy field extracted from an email message
BCC	BCC or Blind Carbon Copy field extracted from an email message
MD5HASH	MD5 (or SHA-1) hash value generated by creating a binary stream of the file
THREADID	Keeping Inclusives together as populated by the vendor's threading analytics.
Is Embedded	Populate "Yes" for embedded documents
DESIGNATION	All Confidentiality designations
REDACTED	Populate "Yes" for redacted documents
FULLTEXT	Relative path to document text/OCR file if provided in production
NATIVELINK	Relative path and filename to produced native file.